

Santa Cruz HECO
RECORDING REQUESTED BY
Pacific Gas and Electric Company
P.O. Box 770000
San Francisco, California 94177

9459841-SAK

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
Berkeley Office
700 Heinz Avenue, 2nd Floor
Berkeley, California 94710
Attention: Barbara J. Cook, Chief
Site Mitigation Branch



2001-0004343

Recorded
Official Records
County Of
SANTA CRUZ
RICHARD W. BEDAL
Recorder

REC FEE 43.00

02:20PM 26-Jan-2001 JRS
Page 1 of 13

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

(Re: APN 018-151-26, 618 Main Street, Watsonville, California)

This Covenant and Agreement ("Covenant") is made by and between Pacific Gas and Electric Company (PG&E) (the "Covenantor"), the current owner of property situated in Watsonville, County of Santa Cruz, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471(c), the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the land of hazardous materials as defined in Health and Safety Code ("H&SC") section 25260. The Covenantor and the Department, collectively referred to as the "Parties", hereby agree that the use of the Property be restricted as set forth in this Covenant.

ARTICLE I

STATEMENT OF FACTS

1.01. The Property, totaling approximately 0.4 acres is more particularly described and depicted in Exhibit "A",

attached hereto and incorporated herein by this reference. The Property is located in the area now generally bounded by Main Street to the Southwest, Brennan Street to the Northeast, Freedom Boulevard to the Northwest and East 5th Street to the Southeast, County of Santa Cruz, State of California. The Property is more specifically described as 618 Main Street, Watsonville, County Assessor's Parcel No.: 018-151-26.

1.02. The Covenantor is investigating the Property under the supervision and authority of the Department. The final remedy will be selected after additional studies are completed. Because hazardous substances, as defined in H&SC section 25318, which are also hazardous materials as defined in H&SC section 25260, including volatile organic compounds, petroleum hydrocarbons, polynuclear aromatic hydrocarbons are found in soil and groundwater, and arsenic and hexavalent chromium are found in soil, in and under portions of the property, the Parties agreed that a deed restriction is required as an interim remedial measure. The interim remedial measure also includes maintaining the current asphalt parking lot, commercial building and other structures on the property (the "Cap"). During the time period when the additional studies are being conducted and until implementation of the final remedy is completed, the Covenantor will remain responsible to restore the Cap to the extent the Covenantor's activities impact the Cap. Owner, as defined in § 2.02 of this Covenant agrees to maintain the Cap on the Property. This deed restriction and Cap may be modified by the final remedy.

1.03. As detailed in the Preliminary Endangerment Assessment, dated November 1991, all or a portion of the surface and subsurface soils within twenty (20) feet of the surface of the Property contain hazardous substances, as defined in H&SC section 25316, which include the following polynuclear aromatic hydrocarbons, petroleum hydrocarbons, volatile organic compounds, and metal contaminants of concern in the ranges set forth below: total benzo(a)pyrene equivalents(0.41 to 24.1 mg/kg), as set forth

in the Site Investigation Work Plan by IT Corporation dated April 4, 2000, total petroleum hydrocarbons (TPH) as gasoline (<1.0 mg/kg to 3,500 mg/kg), TPH as diesel (<11 to 4,400 mg/kg), TPH as oil (<1.6 to 700 mg/kg), ethyl benzene (<0.0011 to 11 mg/kg), toluene (<0.0011 to 12 mg/kg), xylenes (<0.0011 mg/kg to 110 mg/kg), arsenic (0.84 to 10.3 mg/kg), and hexavalent chromium (<10.7 to 24.8 mg/kg). Based on the Preliminary Endangerment Assessment, the Department concluded that use of the Property as a residence, hospital, school for persons under the age of twenty-one (21) or day care center would entail an unacceptable cancer risk.

Groundwater at the Property is found approximately 16 to 30 feet below ground surface. Contaminants in the groundwater collected during the April 1999 groundwater monitoring event include naphthalene (0.14 to 440 ug/l), acenaphthene (<0.10 to 11 ug/L), fluorene (<0.10 to 27 ug/L), anthracene (<1.0 to 1.9 ug/L), phenanthrene (<0.10 to 8.8 ug/L), TPH as gasoline (50 to 3000 ug/L), TPH as diesel (<50 to 3300 ug/L), benzene (<0.5 to 26 ug/L), toluene (<0.5 to 440 ug/L), ethylbenzene (<0.5 to 120 ug/L), and xylenes (<0.5 to 740 ug/L). California drinking water standards are benzene at 1 ug/L, toluene at 150 ug/L, xylenes at 1750 ug/L, and ethylbenzene at 700 ug/L. The Department concludes that the groundwater presents an unacceptable threat to human health and safety.

ARTICLE II

DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at the time holds title to all or any portion of the Property.

2.03. Occupant. "Occupant" means any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

ARTICLE III GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the land pursuant to H&SC section 25355.5(a)(1)(C) and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property, (c) is for the benefit of, and is enforceable by the Department, and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to H&SC section 25355.5(a)(1)(C), this Covenant binds all Owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the Owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471(b), all successive Owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to the sale, lease or sublease of the Property, or any portion thereof, the Covenantor, Owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous substances are located on or beneath the Property, as required by H&SC section 25359.7.

3.04. Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference in each and all deeds and leases for any portion of the Property.

3.05. Conveyance of Property. The Owner shall provide notice to the Department not later than thirty (30) days after any conveyance of any ownership interest in the Property (excluding mortgages, liens, and other non-possessory encumbrances). The Department shall not, by reason of this Covenant, have authority to approve, disapprove, or otherwise affect proposed conveyance, except as otherwise provided by law, by administrative order, or by a specific provision of this Covenant.

. ARTICLE IV
RESTRICTIONS

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

- (a) A residence, including any mobile home or factory built housing, constructed or installed for use as residential human habitation.
- (b) A hospital for humans.
- (c) A public or private school for persons under twenty-one (21) years of age.
- (d) A day care center for children.

4.02. Soil Management

- (a) No activities that will disturb the soil (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) shall be allowed on the Property without a Soil Management Plan and a Health and Safety Plan approved by the Department.
- (b) Any contaminated soils brought to the surface by grading, excavation, trenching or backfilling shall be managed in accordance

with all applicable provisions of state and federal law.

- (c) The Owners or Occupants who conduct any building, filling, grading, mining or excavating in the Property shall provide the Department at least fourteen (14) days written notice.

4.03. Prohibited Activities. The following activities shall not be conducted at the Property:

- (a) Raising of food (cattle, food crops).
- (b) Extraction of groundwater for purposes other than site remediation, groundwater monitoring or construction dewatering.

4.04. Non-Interference with Cap. Covenantor agrees:

- (a) Activities that may disturb the Cap (e.g. excavation, grading, removal, trenching, filling, earth movement, or mining) shall not be permitted on the Capped Property without prior review and approval by the Department.
- (b) The Cap may be disturbed for the purpose of performing emergency repairs. The Owner or Occupant shall notify the Department of emergency repairs to the Cap no later than twenty-four (24) hours after such repairs have begun.
- (c) All uses and development of the Capped Property shall preserve the integrity of the Cap.
- (d) The Cap shall not be altered without written approval by the Department.
- (e) Owners or Occupants shall notify the Department of each of the following: (i) the type, cause, location and date of any damage to the Cap and (ii) the type and date of repair of such damage. Notification to the Department shall be made as provided below within ten (10) working days of both

the discovery of any such disturbance and the completion of any repairs. Timely and accurate notification by any Owner or Occupant shall satisfy this requirement on behalf of all other Owners and Occupants.

4.05. Maintenance of Cap. Covenantor shall maintain the Cap on the property until an O&M Agreement is entered into between the Department and the Owner or Covenantor.

4.06. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment.

4.07. Access for Implementing the Final Remedy and Operation and Maintenance. The entity or person responsible for implementing the Final Remedy and Operation and Maintenance Activities shall have reasonable right of entry and access to the Property for the purpose of implementing the Final Remedy and Operation and Maintenance Activities until the Department determines that no further Operation and Maintenance is required.

ARTICLE V ENFORCEMENT

5.01. Enforcement. Failure of the Covenantor, Owner or Occupant to comply with any of the Restrictions specifically applicable to it shall be grounds for the Department to require that the Occupant or Owner of the Property at the time of non-compliance modify or remove any improvements ("Improvements" herein shall mean all buildings, roads, driveways, and paved parking areas), constructed or placed upon any portion of the Property in

violation of the Restrictions. Violation of this Covenant shall be grounds for the Department to file civil or criminal actions against the Occupant or Owner as provided by law.

ARTICLE VI

VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, Owner, Occupant or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233.

6.02 Termination. Covenantor, Owner, Occupant or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC section 25234.

6.03 Term. Unless ended in accordance with the Termination paragraph above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII

MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Santa Cruz within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04. Notices. Whenever any person gives or serves any Notice ("Notice" as used herein includes any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, postage paid, certified, return receipt requested:

To Covenantor: Pacific Gas and Electric Company
Vice President - Environmental Affairs
P.O. Box 770000, N10A
San Francisco, California 94177
and a copy to: Pacific Gas and Electric Company
Central Coast Office
356 E. Alisal Street
Salinas, California 93912
Attention: Property Manager

To Department: California Environmental Protection Agency-
Department of Toxic Substances Control
Region 2
Chief, Site Mitigation Branch
700 Heinz Avenue, Suite 200
Berkeley, California 94710

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05. Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06 Statutory References. All statutory references include successor provisions.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: Pacific Gas and Electric Company

By:

Vinda S. Chinn

Title:

VICE PRESIDENT- GENERAL SERVICES

Date:

11-21-2000

Department of Toxic Substances Control

By:

Barbara J. Cook

Title:

Barbara J. Cook, P.E., Chief Site Mitigation Branch

Date:

11/29/2000

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

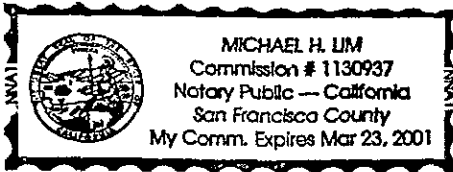
State of California

County of San Francisco

On November 21, 2000 before me, Michael H. Lim, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Linda E. Chinn
Name(s) of Signer(s)

- ☒ personally known to me
☐ proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Michael H. Lim
Signature of Notary Public

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Covenant to Restrict Use of Property

Document Date: November 21, 2000 Number of Pages: 10

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: Linda E. Chinn

- ☐ Individual
☒ Corporate Officer
Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

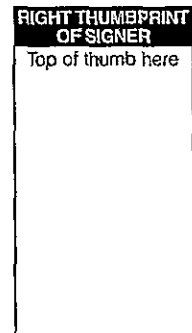
Signer Is Representing:



Signer's Name: _____

- ☐ Individual
☐ Corporate Officer
Title(s): _____
☐ Partner — ☐ Limited ☐ General
☐ Attorney-in-Fact
☐ Trustee
☐ Guardian or Conservator
☐ Other: _____

Signer Is Representing:



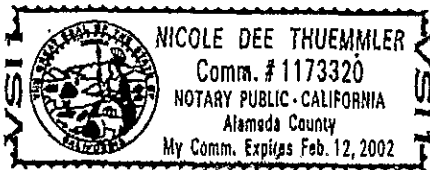
ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of Alameda } ss.

On November 29 2000 before me, Nicole Dee Thuenmiller,
(DATE) (NOTARY)
 personally appeared Barbara J. Cook
SIGNER(S)

☐ personally known to me - OR - ☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Nicole Dee Thuenmiller
NOTARY'S SIGNATURE

OPTIONAL INFORMATION

The information below is not required by law. However, it could prevent fraudulent attachment of this acknowledgment to an unauthorized document.

CAPACITY CLAIMED BY SIGNER (PRINCIPAL)

☐ INDIVIDUAL
☒ CORPORATE OFFICER

TITLE(S)

☐ PARTNER(S)
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER: _____

DESCRIPTION OF ATTACHED DOCUMENT

Covenant to Restrict Use of Property
TITLE OR TYPE OF DOCUMENT

10
NUMBER OF PAGES

11/21/2000
DATE OF DOCUMENT

SIGNER IS REPRESENTING:
 NAME OF PERSON(S) OR ENTITY(IES)

OTHER

